IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1832 of 1983

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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JAYNARAYAN RAMCHANDRA

Versus

HEIRS OF CHHAGANLAL UTTAMCHAND SARAIYA

Appearance:

1. Civil Revision Application No. 1832 of 1983

MR BHARAT J SHELAT for Petitioner

MR SC VAKHARIA for Respondent No. 1

..... for Respondent No. 1/1-2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 02/09/2002

ORAL JUDGEMENT

Neither of the learned advocates is present on

call.

This Revision Application has been preferred under Section 29 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Rent Act') against the order of remand of the suit dated 1st August, 1983 made by the learned Assistant Judge, Surat in Regular Civil Appeal No.181/1981. The petitioner before this Court is the respondent - defendant.

It appears that the plaintiff had instituted Rent Suit No.2595/1975 against the present petitioner, in the Court of Small Causes, Surat, for recovery of the possession of the suit premises on the ground of bonafide personal requirement. The said suit was contested by the petitioner - defendant. The learned trial Judge, under his judgment and order dated 29th April, 1981 dismissed the suit for possession, however, determined the standard rent at Rs.200=00 per month. Feeling aggrieved, the plaintiff preferred the Regular Civil Appeal No.181/1981. Pending the said appeal the plaintiff moved application for amendment to the plaint. The said application was contested by the petitioner. He filed objection at Ex.23. The learned Judge, however, under the impugned judgment and order dated 1st August, 1983 allowed the said amendment and remanded the matter for retrial after allowing the defendant to lead evidence. Feeling aggrieved, the petitioner - defendant has preferred the present Revision Application.

The present Revision Application was admitted to final hearing on 24th April, 1984 (Coram : S.B.Majmudar, J. as he then was) as under :

"Rule. Interim stay of decree for possession on usual terms."

Since then, the respondent - plaintiff moved Civil Application No.827/1986 for direction to the trial Court to proceed further with the suit in accordance with the directions of the lower appellate Court. The said application was allowed on 14th March, 1986 (Coram: M.B.Shah, J. as he then was) in the following terms :

"With the consent of both the parties, C.A. granted. It is directed that it would be open to the trial Court to decide the suit on merits as per the directions of the lower appellate Court. However, it is clarified that the final decree shall not be executed. The Department is

directed to send back the R & P to trial Court."

The only question that arises in the present Revision Application is whether the Court below could have allowed the plaintiff to amend the plaint at the appellate stage. I do not suppose the question requires to be decided in the present Revision Application, more particularly when this Court has directed the trial Court to proceed further with the suit pending this Revision Application. In all probability, by now the suit must have been heard and finally decided. If at all the suit is decided against the petitioner - defendant and appeal against such judgment and decree, if any, also is decided against the petitioner - defendant, the petitioner shall have liberty to challenge the amendment made to the plaint in the Revision Application that may be preferred before this Court.

Subject to the above referred liberty reserved to the petitioner - defendant, the Revision Application is dismissed. Rule is discharged. Interim relief is vacated. The parties shall bear their own costs.

(Ms. R.M. Doshit, J.)

/sakkaf